IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

OP.No. 21809 of 1997(U)

PETITIONER:

**N.A.ABDUL KHADER, S/O. ABOOBACKER,
RAHAMANIYA NAGAR, MUTTATHODI VILLAGE,
CHENGALA PANCHAYAT, P.O. ALAMPADI,
KASARAGOD 671 123.**

**BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.P.B.KRISHNAN**

RESPONDENTS:

1. **THE STATE OF KERALA, REP.BY
THE JOINT SECRETARY, REVENUE
DEPARTMENT, SECRETARIAT, TRIVANDRUM.**

2. **THE DISTRICT COLLECTOR, KASARAGOD.**

3. **THE REVENUE DIVISIONAL OFFICER,
KASARAGOD.**

4. **THE SPECIAL TAHSILDAR (LAND ASSIGNMENT), KASARAGOD.**

5. **THE CHENGALA PANCHAYAT, REP.BY ITS
SECRETARY, KASARAGOD 671 123.**

6. **N.A.IBRAHIM, S/O. ABOOBACKER,
RAHAMANIYA NAGAR, MUTTATHODI VILLAGE,
CHENGALA PANCHAYAT, P.O. ALAMPADI,
KASARAGOD 671 123.**

ADDL.R7 TO R13 ARE IMPLEADED

7. **FATHIMA , W/O. LATE N.A.IBRAHIM, RESIDING AT RAHAMANIYA,
NAGAR, MUTTATHODI VILLAGE, CHENGALA PANCHAYAT P.O.,
ALAMPADI, KASARAGOD 671 123.**

8. **SUHARA W/O. LATE N.A.IBRAHIM, IN DO. DO.**

9. MOHAMMED, SON OF N.A.IBRAHIM, RESIDING IN DO. DO.

10. BASHEER, SON OF DO. IN DO. DO.

11. SHAMSHUDEEN, SON OF DO. IN DO.

12. HANIF, SON OF DO. IN DO. DO.

13. KAREEM, SON OF DO. IN DO.DO.

ADDL.R7 TO R13 ARE IMPLEADED AS PER ORDER DT.13.6.2007 IN CMP. NO.33657/1999 IN OP. 21809/1997.

BY ADV. SRI.M.V.IBRAHIMKUTTY
BY GOVERNMENT PLEADER SMT.K.R.DEEPA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. BO.39173/1997 IN OP. NO.21809/1997

DISMISSED

13.06.2007 **SD/- KURIAN JOSEPH, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER REF. NO.KLC.16/90/MUTTATHODY ISSUED BY RESPONDENT NO.4. DT. 4.12.1990.

EXT.P2:- COPY OF THE ORDER NO.D.DIS 6628/93 (KLCA.42/91) PASSED BY RESPONDENT NO.3 DT.9.7.93.

EXT.P3:- COPY OF THE ORDER NO.D.DIS . 36069/93/G2 PASSED BY RESPONDENT NO.2. DT. 27.4.1995.

EXT.P4:- COPY OF THE ORDER G.O.(RT) NOP.3682/96/RD PASSED BY RESPONDENT NO.1 DT.2.11.96.

/TRUE COPY/

tss

ORDER ON CMP. NO.

KURIAN JOSEPH J.

O.P. NO.21809 OF 1997

Dated 13th June, 2007.

J U D G M E N T

The issue raised in this writ petition pertains to the proceedings initiated against the petitioner under the provisions of the Kerala Land Conservancy Act, alleging encroachment. According to the petitioner, he has not encroached upon the land. He is the assignee of the disputed land and that he has been in possession of the same for the last more than 40 years. Against the steps taken by the Special Tahsildar, the petitioner approached the third respondent and the third respondent passed Ext.P2 order to the effect that the alleged encroachment made by the petitioner is not objectionable. There was also a direction by the Revenue Divisional Officer to assign the encroached land, excluding the portion covered by the well, in case the petitioner is otherwise entitled as per the rules, and thus the matter was remitted to the Special Tahsildar. It is seen that the 6th respondent took up the matter before the District Collector and the District Collector passed Ext.P3 order setting aside the order passed by the Revenue Divisional Officer. The petitioner took up

the matter before the Government leading to ext.P4, wherein the Government endorsed the stand taken by the District Collector. There is no counter affidavit. Though several contentions are taken, two contentions mainly require consideration; (1) once the Revenue Divisional Officer having exercised appellate powers leading to Ext.P2 order, the District Collector does not have any jurisdiction to entertain either an appeal or revision at the instance of the 6th respondent and (2) the provisions of the Kerala Land Conservancy Act may not apply, since the land vests in the Grama Panchayat.

2. Learned Government Pleader submits that the petitioner is not entitled for assignment and that he did not produce any documents to show that he was in possession of the land for more than 40 years. It is the contention of the petitioner that the Revenue Divisional Officer having conducted a site inspection and having been convinced of the factual situation only, Ext.P2 order was passed and no other authority has visited the place. Having regard to the respective contentions taken by the parties, and in view of the undisputed position that the Government in any case is the revisional authority, it is only appropriate that the matter is considered afresh by the

Government with particular reference to the contentions taken by the petitioner, since it is submitted that the petitioner will be in a position to establish that he was in continuous possession of the disputed land for more than 40 years. Accordingly, I quash Exts.P3 and P4 orders. The matter is remitted to the first respondent for fresh consideration. The second respondent District Collector will forward the revision petition filed by the 6th respondent and other materials to the Government within two months from today. Thereafter, the first respondent will consider the matter with notice to the petitioner and respondent Nos.5 and 7 to 13 (legal representatives of deceased 6th respondent), and pass appropriate orders thereon expeditiously. The interim order passed by this Court in C.M.P.No.39173/97 will continue till such time.

The writ petition is disposed of as above.

KURIAN JOSEPH, JUDGE.

tgs

KURIAN JOSEPH, J.

O.P. NO.21809 OF 1997 (U)

J U D G M E N T

Dated 13th June, 2007.